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5 IN THE UNITED STATES DISTRICT COURT
6
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 MONOLITHIC POWER SYSTEMS, INC.,

No. C 08-4567 CW

10 Plaintiff,

ORDER CONCERNING
COURT-APPOINTED
EXPERT

11 v.
12 O2 MICRO INTERNATIONAL LIMITED,
13 Defendant.
14 /

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16 At the March 3, 2009 case management conference, the Court
17 proposed appointing Dr. Enrico Santi as its expert. At O2 Micro's
18 request, the Court permitted it to interview Dr. Santi and to file
19 a memorandum in support of its position that Dr. Santi should not
20 be appointed. O2 Micro filed its memorandum, and MPS filed a
21 memorandum in response.

22 O2 Micro asserts that there is no need for a Court-appointed
23 expert in this case, and thus objects to the Court appointing
24 anyone as an expert. The Court is well acquainted with the family
25 of patents at issue in this case, having presided over multiple
26 lawsuits between the same parties over a number years. In the
27 Court's experience, the questions of infringement and validity of
28 the patents involve particularly esoteric principles of electrical

1 engineering. In light of the probable difficulty of evaluating the
2 persuasiveness of expert testimony in this case as lay people, it
3 is the Court's opinion that the jury would benefit from the opinion
4 of a neutral expert. The Federal Circuit upheld the Court's
5 appointment of an independent expert in related case No. C 04-2000,
6 which involved technical issues similar to those here. Monolithic
7 Power Sys., Inc. v. O2 Micro Int'l Ltd., 558 F.3d 1341, 1346-48
8 (Fed. Cir. 2009).

9 O2 Micro objects to the appointment of Dr. Santi as an expert
10 because of his involvement in case No. C 04-2000. O2 Micro also
11 points to certain contacts between Dr. Santi and agents of MPS as
12 evidence of Dr. Santi's potential bias in favor of MPS. It
13 requests that, if the Court appoints an expert over its objection,
14 the Court appoint Dr. Seth Sanders, a professor at the University
15 of California at Berkeley. The Court previously considered Dr.
16 Sanders' credentials and experience and found that he was qualified
17 to serve as an expert in case No. C 04-2000. Although MPS
18 maintains that it would be appropriate to appoint Dr. Santi, it
19 does not object to Dr. Sanders' appointment. The Court is not
20 persuaded that Dr. Santi's involvement in the previous case or the
21 contacts between Dr. Santi and MPS agents render him unsuitable for
22 appointment in the present case. Nonetheless, because the parties
23 agree that Dr. Sanders would be a suitable expert, the Court will
24 appoint Dr. Sanders.

25 The parties shall, within five days of this order, jointly
26 file a proposed order instructing Dr. Sanders as to his duties in
27 connection with this case. They may use the Court's order of March
28 12, 2007 (Docket No. 800) in Case No. 04-2000 and the Court's order

1 of May 5, 2008 (Docket No. 302) in Fujitsu Ltd. v. Nanya Tech.
2 Corp., No. C 06-6613, as models. The instructions should inform
3 Dr. Sanders that he will testify after the parties' own experts,
4 and thus will not be required to give a lengthy tutorial on the
5 technology at issue to the jury. The parties are also ordered to
6 submit within five days a proposed schedule indicating when the
7 parties will provide Dr. Sanders with information, what information
8 will be provided, when Dr. Sanders' expert's report should be due
9 and when the parties will depose him.

10 IT IS SO ORDERED.

11
12 Dated: 5/5/09

Claudia Wilken
13 CLAUDIA WILKEN
United States District Judge